

Chapter 6**Sales****RULE 606.01 SALES OF SPECIFICALLY DEVISED PROPERTY**

On a sale of specifically devised real or personal property, 15 days notice of the time and place of hearing of the petition for confirmation and copy of the petition must be given to the devisee or the devisee's consent to such sale must be filed.

RULE 606.02 TANGIBLE PERSONAL PROPERTY MUST BE APPRAISED BEFORE SALE

Sales of tangible personal property will not ordinarily be approved or confirmed by the court unless the property has been appraised. If necessary, a partial inventory and appraisal or a letter appraisal from the probate referee shall be filed.

RULE 606.03 SALES OF SECURITIES PURSUANT TO PROBATE CODE SECTION 10200

The following securities need not be appraised before their sale may be authorized by the court:

- A. Securities sold on an established stock or bond exchange;
- B. National market system securities on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer; and
- C. Securities surrendered for redemption conversion.

In all petitions for the sale of securities listed on an established stock or bond exchange, the specific exchange on which such securities are traded, listed and reported must be set forth. For example: NYSE; AMEX; and in the case of over the counter sales, NASDAQ. In petitions for sale of unlisted securities, the recent bid and asked prices must be set forth (the foregoing notwithstanding, see Rule 606.04, below, with regard to the sale of shares in a cooperative). Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

If securities are "closely held", the petition should furnish the basis (by appraisal or otherwise) for fixing the minimum sales price.

RULE 606.04 SALES OF COOPERATIVES AND MOBILE HOMES

Sales of cooperatives (such as residential property where ownership is transferred by transfer of a stock certificate) may be sold as personal property under Probate Code Section 10252 if the estate will incur loss or expense by keeping the property or, alternatively, may be sold under Probate Code Section 10200 as a security. Similarly, the court may approve sales of mobile homes as depreciating property under Probate Code Section 10252.

- A. If a Judicial Council form is used, the court prefers that Judicial Council Form DE-275 (Ex Parte Petition for Approval of Sale of Personal Property) be used, and the information regarding broker's compensation, if any, included. If Judicial Council Form DE-270 (Ex Parte Petition for Authority to Sell Securities and Order) is used, the following information should be included:
 - 1. The names of the purchasers;
 - 2. the sale price;
 - 3. the appraised value; and
 - 4. the broker's compensation, if any.
- B. Appraisals of the assets being sold will be required. If the appraisal date of the cooperative or mobile home is not within one year of the date the petition is submitted, a current reappraisal of the property should be submitted with the petition. If the sale price is not at least 90% of the appraised value, a declaration by the broker or other person responsible for exposing the property to the market should be submitted with the petition, explaining the exposure and why the sale price is the best that can be obtained.
- C. Petitions will be considered by the court ex parte if no requests for special notice are on file or waivers of notice are submitted.

RULE 606.05 EXCLUSIVE LISTINGS FOR THE SALE OF REAL PROPERTY

Probate Code Section 10150 permits a representative to grant an exclusive listing for a period not to exceed 90 days after obtaining the permission of the court. To obtain such permission, the representative must submit a petition setting forth in detail the terms of the exclusive listing agreement, name of the broker, address of broker, and the reasons why such agreement is necessary

and of advantage to the estate. A bare statement of "necessity and advantage" will not suffice. Such petitions will be considered by the court ex parte.

In all cases, the order shall provide that reasonable compensation to a broker will be determined by the court at the time of confirmation of sale.

If the representative is acting under Probate Code Sections 10500-10600, court authority is not required to give such an exclusive listing.

In all conservatorships in which it is proposed to list for sale the family residence, unless the conservator has been granted the power to sell such real property pursuant to Probate Code section 2590, the petition shall contain sufficient allegations to satisfy the requirements of Probate Code Section 2540(b).

RULE 606.06 COMPENSATION TO BROKERS

The compensation to which a broker is entitled is governed by the provisions of the Probate Code (Probate Code Sections 10160-10168). Upon confirmation of the sale of real property, the court will not allow compensation to a broker in excess of six percent (6%) unless justified by exceptional circumstances.

RULE 606.07 REQUIRED ALLEGATIONS REGARDING EFFORTS TO OBTAIN THE HIGHEST AND BEST PRICE

In explanation of petitioner's efforts to obtain the highest and best price, the exposure of the real property to the market must be set forth. The petition shall include the following information:

- A. Whether or not the property was listed with a broker. If so, the type of listing and whether the property was placed in multiple listing;
- B. The extent of advertising and the method (newspapers, signs, etc.). If a newspaper was used, the number of publications and period of time it was advertised;
- C. The number of open houses held, if any;
- D. The number of caravans from the listing broker's own office and the number of caravans from other offices, if any; and
- E. The total period of time the property was exposed for sale prior to the acceptance of the offer.

If this information is not included in the petition for confirmation the court may require the matter to be continued unless a verified supplement is filed by 4:00 p.m. at least four court days before the hearing.

RULE 606.08 PUBLISHED NOTICE AND TERMS OF SALE

Unless a will directs sale or grants an executor the authority to sell real property of the estate (Probate Code Section 10303), a publication of notice of sale of real property is required. A power of sale given by a will to a named executor does not extend to an administrator with will annexed, unless the sale is required by the will (Probate Code Section 8442).

If notice of sale is published, any sale must be in substantial accordance with its terms. A sale of real property may not be made before the day stated in the notice of sale.

The published notice of sale of real property constitutes a solicitation for offers. A petition must not be filed and an offer must not be accepted prior to the date of sale specified in the published notice. If this is done, the sale will be denied.

When the personal representative accepts an offer and files a petition for confirmation of sale, there cannot be a material variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

In conservatorships and guardianships, absent an order under Probate Code Section 2591(d) granting the conservator or guardian the independent power to sell real property of the estate, publication shall be required.

RULE 606.09 MAILED NOTICE OF SALE

In the event of sales for other than all cash (where distribution of promissory notes, etc., which arise out of the sale may be made in kind) the court will require that notice of the hearing for confirmation, together with a copy of the petition for confirmation, be served by mail on the heirs or devisees who would receive the property at least fifteen days before the hearing.

In a conservatorship, notice shall be given to the conservatee by serving the conservatee with a copy of the petition for confirmation of sale and a notice of hearing at least fifteen days before the hearing. In a guardianship, notice shall be given to all minor wards age fourteen or older by serving a copy of the petition for confirmation and notice of hearing by mail on them at least fifteen days before the hearing.

For all sales, notice of hearing and a copy of the petition must also be served by mail at least fifteen days before the hearing on each of the proposed purchasers. See Rule 602.01 Requiring Direct Notice. Proof of the service of such notices must be filed in the Probate Division of the County Clerk's Office at least four court days before the hearing or the matter may be continued.

RULE 606.10 REAL PROPERTY SALES - APPRAISAL WITHIN ONE YEAR

As provided in Probate Code Section 10309, real property must be appraised within one year of the date of the confirmation hearing. The valuation date of the original inventory and appraisal is, in the case of a decedent's estate, the decedent's date of death and in the case of a guardianship or conservatorship, the date of the appointment of the guardian or conservator, regardless of when the appraisal is actually made. Thus, a reappraisal is required for purposes of sale if the date of the confirmation hearing is more than one year after the decedent's death or the date of appointment of the guardian or conservator.

If no inventory and appraisal has been filed, a partial inventory and appraisal may be filed for this purpose, or a letter appraisal obtained from the probate referee appointed for the estate which states the current appraised value of the property and the date appraised.

RULE 606.11 CONDITIONAL SALES OF REAL PROPERTY

Counsel are encouraged by the court not to return a sale of real property which is conditioned upon the occurrence of a subsequent event (such as obtaining financing, changing zoning, or obtaining approval from an environmental control board). However, if unusual and extraordinary circumstances exist, and it is necessary and advantageous to the estate, such sales may be returned.

RULE 606.12 SALES OF REAL PROPERTY WHERE BUYER ASSUMES OR BUYS SUBJECT TO EXISTING ENCUMBRANCE

Sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The return should set forth the facts pertinent to such assumption agreement.

RULE 606.13 REQUESTS THAT PETITIONS BE CONTINUED OR TAKEN OFF CALENDAR

Subject to change on order of the probate judge, one continuance on the hearing will ordinarily be granted for petitions for confirmation of sale if good cause is communicated prior to the hearing by the attorney to the probate examiner, or at the hearing to the court. Any request for a second continuance will require an appearance by the attorney and determination by the court at the time of hearing.

No petition for confirmation will be taken off calendar by anyone other than the court. The attorney will always be required to appear at the hearing and request the court to take the matter off calendar, because there may be persons at the hearing who wish to bid on the subject property.

RULE 606.14 SALES OF PROPERTY WILL NOT BE CONFIRMED IN THE ABSENCE OF ATTORNEY FOR THE ESTATE

In petitions for confirmation of sales of real property, and for sales of personal property where bidding is authorized, the court ordinarily will not proceed with the confirmation of the sale in the absence of the attorney of record, except in those cases where the personal representative, guardian or conservator is present and requests that the sale proceed without such attorney.

RULE 606.15 PROCEEDINGS ON OVERBIDS ON REAL PROPERTY

In the event there is an overbid made in court on the confirmation for sale of real property, the court will inquire of the estate representative and attorney as to their efforts to notify the original bidder concerning the date of the hearing on the petition for said confirmation, and of the necessity of their presence at court to protect their original bid. The court may continue the hearing for appropriate notice if it finds that the original bidder was not properly notified and might desire to protect his/her bid.

Counsel should be prepared to advise the court as to acceptable terms and conditions of sale if there is an overbid on terms other than all cash.

If the sale returned for confirmation is upon credit, a higher offer made to the court pursuant to Probate Code Section 10311, either for cash or upon credit, whether on the same or different credit terms, shall be considered only if the personal representative, in person or by counsel, informs the court prior to confirmation of the sale that the offer is acceptable.

If the sale returned for confirmation is for cash and a higher offer made to the court pursuant to Probate Code Section 10311 is upon credit, the offer shall be considered only if the personal representative, in person or by counsel, informs the court prior to confirmation of the sale that the offer is acceptable.

Where there is a successful overbid in open court on a sale of real property, counsel must complete, and the successful bidder must execute, an "Increased Bid in Open Court" form. The order will not be signed unless the form is filed with the court.

RULE 606.16 BONDS ON SALES OF REAL ESTATE

Petitions for confirmation of sale of real property should set forth the amount of bond in force at the time of sale, and the amount of the property in the estate which should be covered by a bond (as provided in Probate Code Sections 2320 and 8482(c)). A secured promissory note taken as part of the consideration is personal property and an additional bond must be fixed in the amount of such note, plus whatever cash is paid. If additional bond is required, or if no additional bond is required, or if bond is waived, that fact must be alleged.

RULE 606.17 ORDER VACATING SALE AND DIRECTING RESALE

In the event of buyers' default, the order confirming sale may be vacated under Probate Code Section 10350.

In the absence of an order prescribing notice, written notice of hearing shall be mailed at least 15 days before the scheduled hearing to:

- A. Defaulting purchasers unless, before the hearing, written consents to the vacation are filed with court;
- B. Brokers awarded compensation on the sale to be vacated;
- C. All heirs at law or devisees under the will; and
- D. All persons who have given notice of appearance or requested special notice.

If an order vacating sale is entered, the property must be resold as in the first instance, except as provided under Probate Code Section 10351.

**RULE 606.18 ORDER VACATING SALE AND CONFIRMING SALE TO NEW
 BIDDER**

Upon the buyers' default, if 60 days have not elapsed since the original confirmation of sale, and a bid is received in the same or higher amount on the same or better terms, the court can vacate the original order and confirm the sale to new buyers without requirement of new publication of notice. Probate Code Section 10351.

In the absence of an order prescribing notice, written notice of the hearing of a petition under Probate Code Section 10351 shall be mailed at least 15 days before the scheduled hearing to:

- A. Defaulting purchasers unless, before the hearing, written consents to the vacation of the order confirming the prior sale are filed with court;
- B. Brokers awarded compensation, if different than the brokers on resale; and
- C. All persons who have given notice of appearance or requested special notice.

A petition pursuant to Probate Code Section 10351 may be heard ex parte upon presentation of the consents of all defaulting purchasers and waivers of notice by everyone else entitled to notice.